

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD ROE, RICHARD ROE, II and
DON A. NELSON,

Plaintiffs,

v.

JOHN DOE, MARK CUBAN, DALLAS
BASKETBALL, LTD and DOES 1 through
10,

Defendants.

No. C 09-0682 PJH

**ORDER GRANTING PLAINTIFF'S
REQUEST TO CONDUCT DISCOVERY
AND VACATING HEARING DATE**

On February 23, 2009, defendants Mark Cuban ("Cuban") and Dallas Basketball, Ltd.'s (collectively "defendants") filed a special motion to strike the complaint pursuant to California's Anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") statute, Cal.Code Civ. Proc. § 425.16. The matter was set for hearing on April 22, 2009. On April 15, 2009, plaintiff Don Nelson ("Nelson") filed his own motion to strike and also requested leave of court to conduct discovery on the issue of actual malice should the court determine that he is required to demonstrate actual malice, citing Metabolife Intern., Inc. v. Wornick, 264 F.3d 832 (9th Cir. 2001).

Having reviewed all the papers filed on these two motions, the court elects to allow Nelson to conduct limited discovery on the issue of actual malice. The court also grants defendants leave to conduct discovery on this issue, if they so desire.

Accordingly, the court hereby VACATES the April 22, 2009 hearing date. The parties shall complete this limited discovery by May 22, 2009. Nelson shall file a supplemental opposition to defendant's motion to strike, not to exceed five (5) pages no later than June 3, 2009, setting forth any new evidence regarding the issue of actual

1 malice. Or, if Nelson chooses not to supplement his opposition brief, he shall so advise the
2 court. Defendants shall file a supplemental reply, not to exceed five (5) pages, no later
3 than June 12, 2009. The court will thereafter advise the parties of a new date and time for
4 hearing, should one be determined to be necessary. No extensions of these deadlines will
5 be granted.

6 **IT IS SO ORDERED.**

7 Dated: April 20, 2009

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PHYLLIS J. HAMILTON
United States District Judge